



State of Utah

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DEPARTMENT OF HUMAN SERVICES

ANN SILVERBERG WILLIAMSON
Executive Director

OFFICE OF LICENSING

DIANE MOORE
Director

January 31, 2018

Heart and Soul Adoptions, Inc.
Denise Garza
803 North 1250 West #4
Centerville, UT 84014

Re: **NOTICE OF AGENCY ACTION**

REVOCATION OF LICENSE Child Placing Adoption Agency
License Number: 54050 dated 11/1/2017 - 5/31/2018

Dear Denise Garza:

This letter serves as notice that the Utah Department of Human Services Office of Licensing is revoking the Child Placing Adoption Agency license of Heart and Soul Adoptions, Inc. effective 10 business days from receipt of this notice.

The following conditions are immediately in effect:

1. No further adoption services shall be provided. Per R501-1-11(3)(i) Heart and Soul Adoptions may only provide the services necessary to maintain client health and safety during their transition; and
2. (A) shall have and comply with written policies and procedures to transition clients into equivalent, safe, currently licensed program; and
3. (d) Heart and Soul Adoptions is responsible for the program staffing and health and safety need of all clients while the suspension or revocation is pending.
4. Immediately notify and provide copies of this notice to all potential adoptive parents, potential birth mothers, matched birth mothers, matched adoptive parents and finalized adoptive parents (since January 1, 2014) of this action and submit proof of compliance with this requirement to the Office of Licensing no later than 5 business days from receipt of this Notice. Any birth parents wishing to rescind their plan of adoption shall be transported home at Heart and Soul's expense or transferred to another agency.
5. Immediately post this notice on-site and on the homepage of all program operated websites, including social media pages.

6. No new recruitment, matching, transports to Utah, or services shall be completed effective the date of this Notice and all entities providing birth or adoptive referrals shall be informed of this Notice and all new referrals shall be declined.
7. All items purchased by potential adoptive parents (ie: home study documents) as of the date of this Notice shall be provided to the adoptive parents and any prepaid services not yet received on the date of this Notice shall either be provided or refunded at the discretion of the adoptive family.
8. For each current case where the agency maintains custody of pending adoptive children, the agency shall remain professional and transparent in their interactions with the potential adoptive families and the Office of Licensing. The agency will not retaliate against, coach responses, or restrict regular contact with these families or agency employees.
9. The agency shall not restrict access or retroactively alter any agency or file documentation on any employee or any client.
10. The agency shall outline how all files in the agency's possession (including those assumed from other agencies) will be maintained for 100 years including a declaration of who will maintain the files in the event of the agency's closure.

This action is taken pursuant to the Administrative Procedures Act, Title 63G Chapter 4 and Utah Code 62A-2-112. The office is authorized to deny, place conditions on, suspend, or revoke a license, and restrict or prohibit new admission in a program, if the program fails to comply with the licensing rules, is involved with commission of any illegal act, or fails to meet standards required to provide services and promote public trust, including by enabling the commission of abuse, neglect, exploitation, harm, mistreatment or fraud.

A Notice of Agency Action (NAA) was issued on October 11, 2017 placing Heart and Soul's Child Placing Adoption License on Conditional status. Specific conditions needed to be met before the license could come out of Conditional status. The following rules justify The Office elevating the assessed penalty to Revocation due to lack of communication or progress toward demonstrating compliance with the previous NAA.

R501-1-11(3)(a) the Office may place a license on Conditional status. Conditional status allows a program that is in the process of correcting violations to continue operation, subject to conditions established by the Office. Failure to meet the terms of the conditions, and time frames outlined on the notice, could result in further penalty;

(c) the Office may revoke a license;

(h) Repeated violations of the same rule or statute, or failure to comply with conditions of a Notice of Agency Action may elevate the penalty level assessed.

While monitoring compliance after the NAA was issued, the Office of Licensing found the following violations:

- **R501-1-11(3)(k)** Pending an appeal of a revocation, suspension or conditional license that restricts admissions, licensee shall not accept any new clients as outlined on the Notice of Agency Action, or while an appeal of a penalty is pending without prior written authorization from the Office.
- Condition E of the Notice of Agency Action on October 11, 2017 states "No new recruitment, matching, transports to Utah, or services shall be completed effective the date of this Notice and all entities providing birth or adoptive referrals shall be informed of this Notice and all new referrals shall be declined."

Violation(s):

1. At least one birth mother was accepted as a new client, matched, and transported to Utah after issuance of the NAA on October 11, 2017.
- **R501-1-2(10)** "Fraud" means a false or deceptive statement, act, or omission that causes, or attempts to cause, property or financial damages, or for personal or licensee gain. Fraud includes the offenses identified as fraud in Utah Code Title 76 Chapter 6.

Violation(s):

2. In at least one file audited on January 26, 2018, dates on multiple forms had been altered to reflect dates pre-dating the Conditional NAA.
- **R501-1-11(3)(i)** A licensee shall post the Notice of Agency Action on-site, and on the homepage of each of its websites, where it can be easily reviewed by all clients, guardians of clients, and visitors within five business days, and shall remain posted for 90 days, unless otherwise noted by the Office.

Violation(s):

3. The program failed to post or mention the NAA on the homepage of their website within 5 business days.
- **R501-1-11(3)(j)** A licensee shall notify all clients, guardians and prospective clients of a Notice of Agency Action issued by the Office within five business days. Prospective and new clients will be notified for as long as the Notice of Agency Action is in effect.

Violation(s):

4. While monitoring for compliance with the prior NAA, the Office of Licensing noted that at least 2 adoptive families were not notified by Heart and Soul of the Conditional status placed on Heart and Soul's license within the 5 business days from receipt of the notice.

- Condition I of the Notice of Agency Action on October 11, 2017 states: "The agency shall not restrict access or retroactively alter any agency or file documentation on any employee or any client."

Violation(s):

5. Heart and Soul Adoptions, through their legal counsel, informed us they "may have added some documentation to past files," without any explanation of the nature of those modifications.
- Condition A of the Notice of Agency Action on October 11, 2017 states: "Immediately provide an accurate list of all potential adoptive parents, potential birth mothers, matched birth mothers, matched adoptive parents and finalized adoptive parents to the Office of Licensing."

Violation(s):

6. Heart and Soul Adoptions did not provide this list to the Office of Licensing until November 17, 2017.
- **R501-2-3(A)** The program shall have a governing body which is responsible for and has authority over the policies, training and monitoring of staff and consumer activities for all phases of the program. The governing body's responsibilities shall include the following:
 1. To ensure program policy and procedures compliance.
 - **R501-7-9(E)** A medical examination by a qualified physician shall be conducted to determine the state of the child's health, and any known or potentially significant factors that may interfere with normal development or may signal any potential medical problems. At a minimum, the following shall be documented and shared with parents, potential adoptive parents, and the assigned agency caseworker prior to placement:
 2. The medical care and immunizations received to date.

Violation(s):

7. In at least one case, Heart and Soul Adoptions has failed to provide medical information about an adopted child to the adopted parents. Adopted parents were only provided a "non-identifying social and medical history report form" for the birth mother. This violates Heart and Soul's Adoptive Parent Agency Agreement under section 6 "Agency to Child Service" which states that this information will be provided by the agency.

The following violations are outlined on the Conditional NAA dated October 11, 2017. The Office of Licensing continues to note that the following Administrative Rules and State Statutes indicate a lack of transparency in billing practices and insufficient record keeping practices that may lead to harm or fraud.

- **R501-1-7-6.(A)** A child placing adoption agency shall provide a written disclosure of all fees and expenses prospective adoptive parents may incur before the agency accepts any payments or processes any application from, or enters any agreement with, the prospective adoptive parents.
- **R501-1-7-6.(A)(1)** The disclosure shall identify the services associated with each fee, and specify both the average cost for that service for the preceding two fiscal years, and the maximum fee that may be charged for each service.
- **R501-1-7-6.(A)(2)** A child placing adoption agency shall not charge adoptive parents for any fees or expenses that exceed or were not included in the written disclosure.

Violation(s):

8. File audits conducted on a random sampling of files dating from 2014 to the present revealed incomplete fee disclosures lacking itemization and specificity necessary for adoptive parents to fully understand the allocation of the fees they were required to pay. Many of the disclosure statements did not outline the average costs as required by Administrative Rule.

9. File audits revealed payments exceeding fee statement totals with no receipts or supporting documentation for how fees were assessed. There was no evidence of any refunds issued to the adoptive families except in instances where the adoptive family sought legal action.

- **R501-7-6(B)** A child placing adoption agency may charge adoptive parents an agency fee, which shall include all administrative and professional services provided on behalf of the adoptive parents, including but not limited to pre-adoption evaluations, home studies, personnel, counseling, overhead, and training.

Violation(s):

10. Heart and Soul's adoptive parent agreement form outlines the following:

"The term "Costs of Adoption" shall mean the sum of the Agency Fees, the Confinement Expenses, the Foster Care Expenses, the Home Study Expenses, the Legal Expenses, the Medical Expenses, the Other Expenses, the Pre-Birth Living Expenses and the Travel Expenses"

File audits revealed cases where the agency charged an "Agency Fee" and an additional fee for Home Study and/or Counseling services.

- **R501-7-6(C)** A child placing adoption agency may charge adoptive parents for the actual and reasonable costs of maternity, medical, and necessary pre-natal living expenses of the birth mother in accordance with Section 76-7-203.
- **R501-7-6(C)1** The agency shall retain receipts documenting the actual costs of goods and services provided which exceed twenty-five dollars.
- **R501-7-6(C)2** The child placing adoption agency shall not charge adoptive parents for the travel expenses of any person other than the birth mother.

Violation(s):

11. File audits revealed that the agency maintains minimal and insufficient receipts and itemization regarding birth mother expenses, therefore actual and reasonable costs cannot be determined.

12. File audits revealed instances where adoptive families were charged for the travel of persons other than the birth parent or directly affected persons per 76-203.

- **R501-7-6(D)** The agency shall maintain itemized accounting of the actual expenditures made on behalf of a birth mother. The accounting shall be verified and signed by the agency and adoptive parents, and filed with the court and the Office of Licensing in accordance with Section 78B-6-140.
- **R501-7-6(D)1** The agency shall utilize an affidavit form provided by the Office of Licensing or a substantially similar form including the same information.
- **R501-7-6(D)2** The agency shall require the birth mother to verify that she received all of the itemized goods and services by signing a file copy of the accounting.

Violation(s):

13. None of the files that were audited contained completed itemization of actual expenses and none listed any alternative payment sources.

14. File audits revealed that some of the birth mother applications disclosed they were receiving Medicaid at the time of the application with the agency; others showed Medicaid approval at a later date and retroactive coverage; yet adoptive parents were charged medical expenses in all excess of \$4,000.00 for the birth mothers, with no itemization disclosures or refunds offered.

15. Forms being utilized by this agency for affidavits do not contain substantial similarities to the Office of Licensing provided form, and are insufficient for meeting the

requirements of this Rule.

16. File audits revealed that birth mothers signed expense forms that were not individually itemized and lacked sufficient information for the birth mother to verify which goods and services they actually received, yet several were compensated with large sums of money in potential violation of 76-7-203(3).

- **R501-7-2(F)** "Confinement" means the time period when a woman is hospitalized or medically restricted due to her pregnancy and childbirth.
- **R501-7-6(C)(4)** A child placing adoption agency shall not charge the adoptive parents for the birth parents' post-confinement living expenses.

Violation(s):

17. Files audited revealed confinement being listed by the agency and being paid by the adoptive parent as part of a non-refundable match fee. As it is defined and applied in Rule, confinement cannot be known and expenses associated with confinement cannot be determined until after medically justified confinement has occurred.

18. File audits revealed confinement was outlined as a required expense as part of the match fee and final fees, yet the files did not contain any medical confinement orders or documentation of expenses related to confinement.

19. While performing compliance monitoring, during Conditional status, adoptive parents documentation revealed that confinement fees continue to be charged with no proof stating that birth mother was medically restricted.

- **78B-6-110.5(b)** The child-placing agency or prospective adoptive parents shall search the putative father registry of each state where the birth mother believes the child may have been conceived and each state where the birth mother lived during her pregnancy, if the state has a putative father registry, to determine whether a potential birth father registered with the state's putative father registry.

Violation(s):

20. There was no evidence of putative father searches in multiple files reviewed.

- **R501-2-9(M)1** Staff members shall be trained in all policies of the program, including the following:
 - (a) orientation in philosophy, objectives, and services,
 - (b) emergency procedures,
 - (c) behavior management,
 - (d) current program policy and procedures, and
 - (e) other relevant subjects.

- **R501-2-9(M)4** Training shall be documented and maintained on-site.

Violation(s)

21. Interviews with staff and personnel file audits indicated that none of the required training occurred regarding the requirements of this Rule.

- **R501-1-11-2(f)** the Office shall issue a Notice of Agency Action imposing a penalty for violation(s) if the licensee fails to submit and comply with an approved Corrective Action Plan.

Violation(s):

22. Corrective Action Plan requests dated 05/19/2016 and 01/05/2017 highlighted insufficient record keeping practices, which still remain in violation as of the date of this Notice.

- **62A-2-112** The Office is authorized to deny, place conditions on, suspend, or revoke a license, and restrict or prohibit new admission in a program, if the program fails to comply with the licensing rules, is involved with commission of any illegal act, or fails to meet standards required to provide services and promote public trust, including by enabling the commission of abuse, neglect, exploitation, harm, mistreatment or fraud.

Lack of documentation described in this Notice, particularly in violations 14 and 16 are indicative of the potential for adoptive parents to be defrauded for medical expenses and birth mothers being offered or given money with the intent to induce or encourage a person to sell or dispose of a child; which is in violation of Utah Code Ann. 76-7-203(3)(a) and (b).

Pursuant to 501-1-10-3(d) The Office may report any allegations or evidence of abuse, neglect, exploitation, mistreatment or fraud to clients, clients' legal guardians, law enforcement, insurance agencies, the Insurance Department, DOPL or any other entity deemed necessary by the Office.

In accordance with Utah Code 62A-2-113: "A human services program that has had its license revoked is prohibited from providing any services to clients until after a new license is issued. The Office may not grant a new license after a revocation unless the following conditions are met:

- (a) the human services program provides satisfactory evidence to the Office that the conditions upon which the revocation was based have been corrected;
- (b) the human services program is inspected by the Office and found to be in compliance with all provisions of this chapter and applicable rules;
- (c) at least five years have passed since the day on which the licensee is served with final notice that the license is revoked; and
- (d) the Office determines that the interests of the public will not be jeopardized by granting the license."

The Office of Licensing reserves the right to amend this Notice of Agency Action.

In accordance with the Department of Human Services Administrative Hearing Procedures (Title 497), you may request an administrative hearing if there is a disputed issue of fact. There is no issue of fact if you present facts that on their face establish the right of the Office of Licensing to take the action, or if the facts do not conflict with the facts relied upon by the Office of Licensing in taking its action.

Pursuant to Rule 497-100, if you choose to request an administrative hearing to appeal a disputed issue of fact, you must submit your request of appeal to the Office of Licensing, in writing, within 10 working days of receipt of this letter. This adjudicative proceeding, if requested and granted, shall be conducted informally.

Pursuant to Rule 501-1-8, "a licensee shall not accept any new clients while an appeal is pending."

You can access the 'Request for an Administrative Hearing' form in the *Facility Forms* section of our website: www.hslic.utah.gov.

All correspondence concerning this action should be addressed to:

Samantha Hanson
Utah Department of Human Services
Office of Licensing
195 North 1950 West
Salt Lake City, Ut. 84116

Please reference the program and site name on all correspondence.

Sincerely,



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